

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
JAMES BONINI
CLERK

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Richard Bohanon,

Petitioner,

v.

Ernie Moore,¹

Respondent.

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Case No. 1:01cv463

(Spiegel, J.; Hogan, M.J.)

MOTION FOR LEAVE TO REINSTATE

Now comes the Petitioner, herein pro per, who respectfully requests of this Court to reinstate this case on the Court's active docket, and to advance the cause in the above-captioned case number.

Petitioner has exhausted all available state court remedies, and a memorandum in support is attached in conformity with this motion.

Respectfully submitted,



Richard Bohanon, #374-617
Petitioner, pro per
Chillicothe Correctional Inst.
P.O. Box 5500
Chillicothe, Ohio 45601

¹ Since the stay of these proceedings, Petitioner is now in the custody of Warden Timothy Brunsman, Chillicothe Correctional Institution, Chillicothe, Ohio, Ross County, Ohio

MEMORANDUM IN SUPPORT

Petitioner asserts that on July 16, 2001, he petitioned this Court for habeas corpus relief, pursuant to U.S.C. § 2254, and that through its Report and Recommendation filed on March 18, 2004, this Court stayed the Proceedings until Petitioner exhausted all state remedies.

The stay was granted on the condition that Petitioner exhaust his GROUND ONE claim of newly discovered evidence as a post-conviction remedy to the state trial court, and after abiding by this Court's order to pursue such remedy, the state trial court denied Petitioner's post-conviction pleading on June 10, 2004.

The Petitioner then filed a notice of appeal and motion for delayed appeal to the First Appellate District Court of Appeals, Hamilton County, Ohio, on July 19, 2004, which motion was subsequently overruled on July 29, 2004.

On August 5, 2004, Petitioner was granted a motion for reconsideration by the First Appellate District Court, Hamilton County, Ohio, and subsequent to a hearing on the merits, that Court dismissed Petitioner's appeal on March 23, 2005.

On April 2, 2005, Petitioner, again, filed a motion for reconsideration with the First Appellate District Court, and that motion was overruled on April 29, 2005.

Next, Petitioner filed a notice of appeal and a memorandum in support of jurisdiction to the Ohio Supreme Court on April 29, 2005, and that Court dismissed Petitioner's cause on August 10, 2005.

On June 16, 2005, Petitioner filed a collateral pleading to the First Appellate District Court of Appeals, Hamilton County, Ohio, requesting leave of court to appeal the sentence in this cause, and on August 25, 2005, that Court overruled [Petitioner's] pleading accordingly.

Finally, Petitioner filed a notice of appeal and memorandum in support of jurisdiction to the Ohio Supreme Court from the August 25, 2005 court of appeals judgment, and on January 25, 2006, the Ohio Supreme Court declined jurisdiction to hear [Petitioner's] case and dismissed the appeal without opinion, or quoting findings of fact and conclusions of law to substantiate its decision. This motion ensues.

CONCLUSION

Petitioner asserts that he has exhausted all available state court remedies in compliance with the Report and Recommendation ordered by this Court on March 18, 2004, and this motion should be considered timely filed within the thirty (30) day period to reinstate this case on the Court's active docket, as well as within the one (1) year statute of limitations period pursuant to 28 U.S.C. § 2254.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion for Leave to Reinstate was served by regular U.S./institutional mail to parties for the Respondents, Jim Petro, Ohio Attorney General, Stuart Alan Cole, Assistant Attorney General, Ohio Attorney General Office, 150 East Gay Street, Columbus, Ohio 43215 on this 14th day of February, 2006.


Petitioner, pro per